UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: OLD CARCO LLC AND SCOTT GRAHAM, *Debtors.*	Case No. 09-50002-smb New York, New York August 11, 2020 10:31 a.m. - 11:06 a.m.

(Hearing via Court Solutions)

09-50002-SMB, OLD CARCO LLC AND SCOTT GRAHAM, CHAPTER 11

FRANKIE OVERTON'S MOTION FOR RELIEF FROM THE COURT'S "ENFORCEMENT ORDER" TO PERMIT HER TO PURSUE AN INDEPENDENT CLAIM AGAINST FCA US LLC

BEFORE THE HONORABLE STUART M. BERNSTEIN
UNITED STATES BANKRUPTCY JUDGE

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(Proceedings recorded by electronic sound recording)

THE COURT: Old Carco!

MR. TSUKERMAN: Good morning, Your Honor, Mark Tsukerman from Cole Schotz, on behalf of the Plaintiff, Frankie Overton.

THE COURT: Good morning.

MR. GLUECKSTEIN: Good morning, Your Honor. This is Brian Glueckstein, Sullivan & Cromwell, for FCA US LLC.

THE COURT: Good morning. Mr. Tsukerman, I guess this is your motion, so you can proceed.

MR. TSUKERMAN: Thank you. Your Honor, this is Frankie Overton's --

THE COURT: I have to ask you to take yourself off -- Mr. Tsukerman, I have to ask you to take yourself off the speakerphone because it's hard to hear.

MR. TSUKERMAN: Oh, I apologize. One moment. Let me just put on my headset.

THE COURT: Okay.

MR. TSUKERMAN: Your Honor, can you hear me now?

THE COURT: Yes, now I can hear you.

MR. TSUKERMAN: Great. Your Honor, this is Frankie Overton's motion for relief from the order that was entered with respect to this Court's decision granting in part and denying in part FCA's motion to enforce the sale order. Your Honor, the order currently enjoins Overton from filing an amended complaint that would assert an independent failure to warn claim against

FCA. Your Honor, we assert that due to what we allege was a clerical mistake or oversight, the language in the order is overbroad and does not comport with this Court's ruling and decision.

THE COURT: How so?

MR. TSUKERMAN: The threshold question in this matter is whether the relief we are seeking constitutes a substantive modification to the order or a clerical one. And that issue turns on whether the proposed modification seeks to alter the substance of the Court's ruling. And we submit, Your Honor, that the answer to that question is that it does not. The modification we are seeking doesn't disturb the Court's ruling and the decision in any way, and, therefore, it's non-substantive. If you look at the decision --

THE COURT: But I thought I dismissed all -- wait, wait, wait. I though I dismissed, maybe wrongly, but I thought I dismissed in the decision all of Overton's claims. And the order accurately reflects that disposition, right?

MR. TSUKERMAN: In the decision, Your Honor, you dismissed all of Overton's claims as alleged in the complaint. In the complaint that was before the Court, there was independent claim alleged. The question that was before the Court was whether the claims that were alleged, which were product defect claims, and Overton's position was that she could assert those product defect claims, which were assumed by FCA,

notwithstanding, the punitive damages exclusion because Alabama wrongful death damages do not fall within the threshold of that exclusion. And Your Honor disagreed, but the issues were contract-based argument. The question was the scope of the contract or public policy if the contract was enforced. And so, everything that was before the Court and everything that the Court considered was whether the claims as alleged, which were really assumed liability claims, should proceed. And this Court said that they could not because they were barred by the sale order. But the complaint, although --

THE COURT: So, what was the mistake?

MR. TSUKERMAN: The mistake is that when you look at the language of the order that was actually entered, which defines the claims that are barred as all claims under wrongful death damages, there's no qualification to tie it to the pleading that was asserted. And because of the unique nature of wrongful death damages, and that's the only type of claim that Overton can assert, she now cannot even attempt to amend her complaint to bring an independent claim that falls outside the sale order all together.

Your Honor, if you had considered this issue, and frankly, Your Honor, this wasn't in the papers, so we're not surprised that the Court didn't consider it. But if you had considered whether Overton could assert an independent claim, then as with any other time that the question of an independent

claim comes before the Court, the Court would have likely ruled either -- well, as the complaint was currently drafted, the Court certainly ruled that it pleaded as an independent claim. But the Court would have likely ruled, as with any other plaintiff, that it was without prejudice for the plaintiff to at least attempt to replead to assert an independent claim. But that discussion, that colloquy, that argument was never had because that was never before the Court at all.

THE COURT: But if it was never before me, how could I make a mistake not deciding it? It sounds like you're saying, you didn't make an argument, but I should have recognized that there was an argument and modified my ruling.

MR. TSUKERMAN: No, actually, that's exactly what we're not alleging. We're alleging that you don't have to modify your ruling. We're alleging that the decision is correct. You properly didn't decide it. But due to our error in transcribing the Court's ruling into the order, and not catching the flaw in the language, now the order effectually acts as a continuing injunction, barring Overton from even attempting to plead a claim that is not barred by the sale order.

THE COURT: Why is that the Court's oversight or mistake?

MR. TSUKERMAN: Your Honor, it's more of Overton's oversight in missing the language and not using the --

THE COURT: Let me tell you the problem. One of the problems I'm having is whether it's a mistake within the meaning of 60(a) or a mistake within the meaning of 60(b)(1). And that's an important distinction because if it's a 60(b)(1) mistake, the motion is probably time barred, or at least FCA is arguing it's time barred. I just don't understand how you can say it's a clerical mistake where I decided what was argued. And it sounds to me like you're saying the judgment accurately reflects the memorandum decision.

MR. TSUKERMAN: Your Honor, we're saying there's no mistake in the decision. There's no substantive error in the decision, but the order, due to an oversight, does not accurately reflect what this Court actually ruled in the decision.

THE COURT: But that post-closing issue, you know, I went back, and I looked at all the papers on the original motion. It's true that there were some general distinctions between post-closing and preclosing, but it was really all in connection with the Graham claims, where Graham had separately pleaded a post-closing claim, which included punitive damages and a preclosing claim that didn't. But again, I come back to the issue of how this is a clerical mistake if I've decided what you argued and the judgment accurately reflects what I decided, which is what I'm hearing.

MR. TSUKERMAN: Well, that's exactly why it's a

clerical mistake, Your Honor, in the language. Your Honor, if you assume, for example, hypothetically, and this is not our position, that it is a mistake that would fall within the scope of (b)(1), then that would mean that it's essentially a substantive error. That Your Honor, that this Court made an error, a substantive error in the decision that we should have brought on appeal. But we do not think it is that type of error because we're not challenging that substance of the Court's ruling, and there was no record on this issue below, and so, it's not he type of issue that we should have been required to bring on appeal because it's more the issue that should be brought the way we have, pursuant to Rule 60(a).

THE COURT: You know what it sounds like to me, this is the kind of issue you normally hear on a motion to re-argue, which is essentially a 60(b) motion. The Court overlooked something; the Court should have actually said in the decision and indicated in the judgment that it's without prejudice to any viable post-closing claims, basically. And that's usually a motion for re-argument. If you're telling me that Overton failed to make an argument that maybe it should have made at the time, it sounds like it's excusable neglect or a mistake or something like that, but that sounds like 60(b)(1) motion, which I'm not sure you can do now, frankly.

MR. TSUKERMAN: Well, Your Honor, I don't think we're saying that we should have brought that. I don't think that's

our position because the issue in the motion to enforce brought by FCA was whether -- they were seeking to bar wrongful death damages because they were determined by the Alabama courts to be punitive, and the punitive damages are barred by the sale order. And the focus of the pleadings and all the arguments were regarding that. And the assumption was that all of Overton's claims really assumed liability claims. And all of the arguments and all the issues before the Court were on that issue. And admittedly, the language in the complaint, as drafted, did encompass a failure to warn claim for Overton, but it just wasn't pleaded that way. It was pleaded as assumed liability claims. And the way the complaint separated out post-closing and pre-closing claims for Graham, that just wouldn't be possible for Overton. First, it would be inconsistent with --

THE COURT: Why not?

MR. TSUKERMAN: Well, it would be inconsistent with Overton's position. First, that all the claims were outside the scope of the order. And for the exact reason that we've had to amend the complaint now, it wouldn't be possible, right? Because if the --

THE COURT: Why? Why couldn't you plead the same way that you pleaded for Graham? One theory was that it was the defective design and manufacture, and the second theory was that the proximate cause was the failure to warn.

MR. TSUKERMAN: Well, because our position was that

all the claims were outside the contract and outside the scope of the sale order. So, it wouldn't make sense to take a theoretical alternative position in the complaint.

THE COURT: Why not? You're doing it with Graham, aren't you?

MR. TSUKERMAN: We're doing it with Graham, but with Graham --

THE COURT: Either the proximate cause of the accident was the defective design, or the proximate cause was the failure to warn. Exactly what you argued.

MR. TSUKERMAN: Graham is proceeding with a claim on the product defect against FCA no matter what. Graham is just not seeking punitive damages in connection with that claim.

THE COURT: Right.

MR. TSUKERMAN: With Overton, it's a binary proposition. It's one or the other. Overton can't proceed against FCA based on a product defect claim at this point because it was found that that Overton position was incorrect, which is now final. And we're not challenging that ruling. So, now Overton is only seeking to assert post-closing claims against FCA. But at the time, Overton's position was that the claims that were being asserted against FCA fell outside the scope of the sale order. So, it wouldn't make sense to have a -- I mean, I don't even know how that would look in the complaint, but you would have to have --

THE COURT: Let me tell you how it would look. Alternatively, even if the sale order bars the punitive damage claim based on the theory of defective design and manufacture, it would not bar a post-closing claim arising from the failure to warn. That's what you would argue. Which is kind of what you tried to argue in the district court in a footnote and then before the Second Circuit. So, that brings me to my next question. Procedurally or substantively, what is the effect that the Second Circuit's determination in its footnote that you forfeited the argument about post-closing claims?

MR. TSUKERMAN: Your Honor, we submit that it has no effect, assuming the Court agrees, that the issue that we're seeking to address is a clerical issue. Because it's not an issue that one would expect to bring on appeal, given that it wasn't addressed below, and it's an issue that is appropriately brought under Rule 60(a).

THE COURT: What does it mean, though, when the court says you forfeited an argument?

MR. TSUKERMAN: Well, the question is what was forfeited? I think what it means is, the Second Circuit determined that the argument wasn't adequately reasonable, and the district court didn't have notice of it, which is fair, because it never was raised on the district court level. And then the court held that it wasn't therefore adequately preserved on appeal and forfeited it. But the question is, what

was forfeited?

THE COURT: Fair enough. But that's what I'm asking.

MR. TSUKERMAN: Right. I mean the argument that was admittedly raised for the first time at the Second Circuit level was that the order had substantive error, and therefore, it should be reversed. But that's not the argument we're making under Rule 60(a). We're not making that argument. Certainly, there was never an argument made before the Second Circuit that the order, due to the parties' transcription error, didn't accurately reflect the import of this Court's decision, which was to bar claims barred by the sale order. The current order, as now entered, we submit, exceeds the scope of even the sale order. And we think that that certainly wasn't this Court's intent.

THE COURT: Well, you might have been right if you had made the argument, or if Overton had made the argument that in the alternative, the design and manufacture claims are barred, the assumed liability claims you referred to. We also have claims for failure to warn post-closing, and those claims would not and could not be barred by the sale order. And you'd probably be right, frankly. But you're saying you never made that argument, and I decided the argument you made, and it sounds like the judgment accurately reflects what I decided, and you're saying, well, but maybe the judgment, which by the way, I won't say it was negotiated, but you certainly had notice of,

and you had one objection to the form of the judgment, which probably was resolved. But you're saying, well, maybe the judgment should have carved something out, recognized an argument that I never made. I just don't understand that.

MR. TSUKERMAN: Well, I think that's maybe another way to look at it, Your Honor. Had we caught the issue with the language in paragraph 2 it is, I think, of the order before, while it was being settled, and before it was entered, and we raised this issue with the Court, we submit that the Court would have agreed that in its decision, it didn't intend to preclude Overton from the ability of even attempting to assert an claim, and would have agreed to a qualification of the language in that paragraph in order to prevent that outcome.

THE COURT: Wouldn't I have said that if you submitted such an order, that it doesn't accurately reflect the decision?

MR. TSUKERMAN: That's right. I'm sorry, what's the question, Your Honor?

THE COURT: In other words, when I get an order, if somebody puts something in which was not int he decision, I always reject it saying, the order doesn't accurately reflect the decision. It's inconsistent with the decision. And that's why I say, this sounds like what you're really arguing is, you should have made a motion for re-argument to clarify the decision. Saying that either I overlooked it, or you overlooked it, or whatever you want. Or you meant to argue this. But you

didn't do that.

All right. You haven't really told me, or maybe you have. It's not clear to me what the effect of Second Circuit's statement that you forfeited the argument that the court made substantive error by not, I guess, recognizing that the sale order didn't bar post-closing claims.

MR. TSUKERMAN: Your Honor, I think just to make sure my answer is clear on that question, the question is what was forfeited and what was waived, and the argument here that there's a clerical mistake or oversight is not an argument that was raised with the Second Circuit, nor should it have been raised with the Second Circuit. And therefore, it is not waived or forfeited.

THE COURT: Okay. Thank you.

MR. TSUKERMAN: And there's one other point, Your Honor, if I can just mention before you move on?

THE COURT: Sure.

MR. TSUKERMAN: Obviously, this motion was brought under Rule 60 for relief from the order, but I think given the unique circumstances of this case, and the fact that the order itself, the order interpreting the sale order has the effect of a continuing injunction, I think that this Court certainly has the power and the authority and the ability to interpret, enforce, and implement its own orders. And to the extent the Court agrees that it shouldn't foreclose a non-debtor from the

ability to bring a claim that's outside of the sale order, which the order is intending to interpret or enforce, this Court has the ability to rectify that issue, even if it's not under Rule 60. Even *sua sponte*.

THE COURT: I can do it outside of Rule 60?

MR. TSUKERMAN: Your Honor, I respectfully submit that you can. The bankruptcy court is a court of equity; this is your order, you entered the order; and this Court can review it, modify it, and interpret it, and implement it. I think what's happening here is that the order is being implemented in a way that was not anticipated, not intended by this Court. I think the effect of the order currently has jurisdictional implication. There's binding Second Circuit law that the sale order doesn't bar independent claims. Assuming Your Honor admits that we've an independent claim now in the amended complaint, there's just no reason that that claim should be barred. And the order currently prevents Overton from even making that claim.

THE COURT: Well, if you really want me to determine under the Federal Rules of Civil Procedures whether you adequately pleaded an independent post-closing claim, I'm happy to do it. I don't think you're going to be happy with the result.

MR. TSUKERMAN: Well, Your Honor, you already made that determination with (inaudible) Graham.

THE COURT: You don't allege any facts in there. All you say is that they knew, and they failed to warn.

MR. TSUKERMAN: Your Honor, we alleged the same facts that Graham alleged in support of his independent claim, which this Court already allowed. So, unless Your Honor wants to reconsider that decision, we think that there's law of the case on that.

THE COURT: Okay. Fair. Let me hear from Mr. Glueckstein.

MR. GLUECKSTEIN: Thank you, Your Honor. Good morning. This I Brian Glueckstein, Sullivan & Crowell for FCA. Your Honor has hit it on the right points. And just to level segue where we are, Your Honor, the Court is right. This Court did dismiss in its 2018 decision, all of Overton's claims. And the order that was reviewed by Mr. Tsukerman, and agreed and submitted to the Court, pursuant to the Court's direction, reflect that decision.

And, Your Honor, the Court is 100 percent correct. And then there was some colloquy in the discussion now about whether this could have been pleaded in the alternative in the complaint, and certainly, as Your Honor points out, it could have been. I would go further. Certainly, at the point that Your Honor issued the decision and Overton determined to take an appeal of the decision, it had one year under Rule 60(b)(1) to bring a motion for reconsideration to raise this very issue.

They could have brought that motion. They chose not to.

In fact, Your Honor, what they did was appeal the order. And now in the briefing on this Rule 60 motion, Your Honor is seeing counsel downplay what they did. And we would submit, Your Honor, that they are understating drastically what they tried to do in the two appeals. They included this very point in their briefing with the district court. Did so in footnote. That was a tactical decision that they made. They did that for whatever reason they decided to do it.

In their briefing to the Second Circuit, after the district court affirmed this Court's decision in its entirety, Overton's counsel argued this point at length. It argued it in its opening brief, and it argued it in even more length in its reply brief covering four pages. And as part of that discussion, Your Honor, contrary to what we are hearing now, Overton's counsel argued to the Second Circuit Court of Appeals that she had asserted post-closing claims since "the filing of the complaint in 2017." And cited to paragraph 56 of the original complaint.

This was a substantive point that was raised in the appeal, it was discussed after oral argument before the panel in May. The Second Circuit did not stay silent on this issue. And unlike the Panama (indiscernible) case that's cited in the reply brief that was filed in connection with this motion, where there was some question as to whether the Second Circuit had engaged

on the issue, here, the Second Circuit included in its decision and mandate an express determination that the argument was forfeited. And Your Honor asked the question of Mr Tsukerman as to what that means, and we would submit, Your Honor, that the substantive point has in fact been forfeited. And I think what we're hearing now is --

THE COURT: Can I ask you, Mr. Glueckstein?

MR. GLUECKSTEIN: Yes.

THE COURT: Is the argument just on the appeal forfeited so that the Court won't consider it? Or is the underlying argument, which is basically the same argument they're making here, forfeited in this Court?

MR. GLUECKSTEIN: Our position, Your Honor, is that them having chosen to engage in this argument on the appeal, the Second Circuit has now said, as a substantive matter, it has been forfeited. What we're hearing now is that the potential way around that, and that's why this motion is filed, in my view, as a Rule 60(a) motion, is this clerical error idea. That notwithstanding the fact that the substantive issue is now barred because they engaged on this issue in however manner they chose to do it, and that argument failed.

They argued strenuously and attempted to persuade the Second Circuit to exercise its discretion that despite having only raised it in a footnote with the district court, to consider this argument on the appeal. The Second Circuit took

argument orally at the oral argument on this and declined to do so. Coming back to this Court now and asserting the exact same substantive argument should not, Your Honor, we submit, be permitted. And so, this does come back to the question, where Mr. Tsukerman started the argument this morning, as to whether this is a clerical error. And, Your Honor, we submit that it clearly is not. What they're asking to do here is modify the Court's 2018 decision that bar in its entirety Overton's claims that they have represented to the Second Circuit Court of Appeals.

And, frankly, Your Honor might recall, there was a colloquy back in 2018 on the motion before this Court where counsel for Overton made the point that Overton had asserted the same post-closing claims as Graham. Yes, the focus of that argument primarily at the timed was on Graham claims, but the first time we ever heard that this is a new claim they want to assert that had not been part of the case, that had not been part of the decision before Your Honor was in this motion. And the record all the way up to the Second Circuit Court of Appeals belies that fact, Your Honor. So, this is, as Your Honor posited, a Rule 60(b)(1) motion. And that by statute, under Federal Rule 60(c)(1) is expressed that that must be brought within one year of the date of entry of the enforcement order.

So, what happened here, Your Honor, we would submit, is that the plaintiff chose an appeal strategy. They were

seeking desperately to overturn this Court's decision with respect to the macro issue, as to whether the damages under the Alabama Wrongful Death Act were considered punitive or not. They focused their efforts there, they raised the post-closing claim in connection with that argument, and they lost. And now, they're coming back to Your Honor to try to start over again. And we would submit, Your Honor, that's precisely what Rule 60 is drafted to prevent.

After having litigated this issue for two years, up to the Second Circuit, FCA is entitled to some finality. And we don't believe that Your Honor has the ability under Rule 60 as a result of the mandate being issued by the Second Circuit, or to consider it under 60(b) to engage on this issue further now under this new theory that Overton has come up with. And so, Your Honor, we would submit that really the only path to the modification that's being sought is Rule 60(a) and there's nothing in the record to suggest that there was an error in transcription from the decision where this Court in fact barred all of Overton's claims, reducing that to the order that was negotiated and entered by the Court in November of 2018.

So, we would submit, Your Honor, that, yes, we'd be having a different discussion if this had been raised contemporaneously or in parallel with the appeal of the preclosing claims, but we don't believe at this stage, Your Honor, that this Court should entertain any modification of the

judgment at this time.

THE COURT: What's your response to the argument that there's a general equity power to correct the judgment? Not to correct the mistake because I'm not convinced there's nay mistake here, but to clarify a judgment to the effect that the question been presented, this is how I would have decided it.

MR. GLUECKSTEIN: Your Honor, it's hard to answer int he abstract, but, I think, in the context of what we're talking about here, where the Court is being asked to, notwithstanding if we accept for a moment that Rule 60 is not available, because of a strategic path that the plaintiff here chose to take, that the Court should nonetheless revisit issues two years on, we would submit, Your Honor that that's not an equitable way to proceed. That in fact, this plaintiff has been well represented by competent counsel, who has fought tooth and nail all the way up to the Second Circuit on all of these issues. They have fought in the Alabama trial court, they have resisted in the Alabama trial court any dismissal of these claims, saying, we have continuing appeals. And so, Your Honor, this is yet, another tactic.

I would submit, Your Honor, that on the facts at least of this case, there is no basis for the Court to try to exercise any sort of equitable remedy to a situation that has Rule 60 in the federal rules plainly available and was not utilized. And that is a decision to pursue an appeal instead of a motion for

reconsideration that we submit this particular plaintiff needs to live with at this stage of the litigation.

THE COURT: Well, the question was originally, is there some general equitable authority outside of Rule 60 to modify a judgment that does not reflect what I would have decided had the issue been presented. And as you know, I've consistently said that the sale order doesn't bar post-closing wrongful conduct. And I think the Second Circuit said that in GM in the Elliot case. And it makes sense. And the question is, whether I should clarify the judgment, for lack of a better verb, to clarify the judgment to say that, even though it wasn't raised, it wasn't decided, and it's not in the judgment as a matter of equity, whether or not Rule 60 permits it? I understand you're saying this is not an equitable situation. I'm really asking more, is there an authority to do that?

MR. GLUECKSTEIN: I'm not aware of such authority outside of Rule 60, Your Honor. And I would say, understanding you're asking the general equitable question, and I'm not aware of such authority, other than the fact that this is a court of equity and the Court does have broad discretionary powers. But I'm not aware of any instance where Rule 60 was found to be available and the Court nonetheless granted relief. There is quite a bit of caselaw, in fact, enforcing, and we cited some of it in our briefing, but, of course, there's quite a bit of caselaw suggesting that if you don't comply with the timing and

initial requirements of Rule 60 that that is finality. And I think finality here is important.

And the last thing I would say on this point, Your Honor, is with respect to the post-closing claim itself. And I'm not going to go into the details of that. Obviously, Your Honor has issued now two decisions in the last two years that deal with that issue and set out a standard in the Deardon case. And with respect to the Graham claims here that any litigant can look to. I think there continued to be some disagreements, frankly, as to how that's interpreted, and I don't concede for this purposes of this discussion that this amended complaint necessarily falls within that standard. But I don't believe that the Court needs to get there.

I think this is a particular situation where the litigation history here is well documented. Your Honor referenced earlier this morning that you've reviewed the record, we reviewed the record, I'm not going to belabor it, but I think this is the classic situation where a litigant chose an appeal path, Rule 60 states what it does. Any challenge at this point is untimely, absent it being a clerical error, and I think it is patently clear from the documents that there was no clerical error. So, under the circumstances, we would submit, Your Honor, that this motion should be denied, and we should finally have the finality that we thought the Second Circuit decision had provided.

THE COURT: Thank you. Mr. Tsukerman, I have one question. Do you dispute that if Rule 60(b)(1) is the appropriate vehicle for your motion that the motion is time barred? And if not, why not?

MR. TSUKERMAN: No, Your Honor. I don't think we can dispute that. We dispute that this argument needs to be brought under (b)(1), but if the Court finds that it must have been brought under (b)(1), then under the statute, it is time barred because it's been more than a year. But, Your Honor, we think this is a unique circumstance and would fall under Rule (b)(6), which is a very broad kind of --

THE COURT: I know but hasn't the Second Circuit said though you can't rely on (b)(6) if one of the more specific provisions applies?

MR. TSUKERMAN: The Second Circuit has ruled that.

THE COURT: Okay.

MR. TSUKERMAN: But we don't think it's a (b)(1) situation. Again, because we're not challenging any of the substance of this Court's rulings in its decision. We're seeking actually the exact relief that Your Honor just mentioned in connection with the Court's equitable power and the relief, which you could potentially do, which would be just to clarify that the order axiomatically does not bar claims that are independent and therefore outside the 363 sale. If that qualification were in the order, we would not have this issue.

And so, Your Honor, to that point, we could have brought this motion as a motion essentially to interpret and clarify the order, alternatively, under Rule 60. And we think this Court has inherent powers. And is a court of equity. And this Court has inherent powers to review, and interpret, and enforce, and implement its orders. And if there's an injunction in the order, which the Court determines exceeds the scope, which has the effect of being contrary to Second Circuit law, and potentially exceeds the scope of this Court's limited jurisdiction to bar claims, which are impacted by the order and not bar claims that are outside the scope of the sale order, amongst non-debtors, then this Court has the power to consider that.

THE COURT: Okay. What I'd like the parties to do is to order the transcript to this argument, file it on the ECF and email a copy to chambers, if you would. And I'll reserve decision.

MR. TSUKERMAN: Will do.

MR. GLUECKSTEIN: Thank you, Your Honor.

THE COURT: Thank you.

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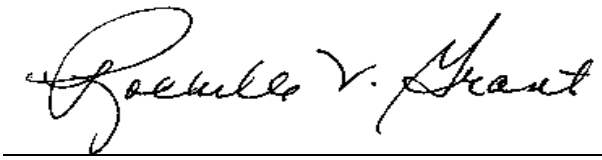
CERTIFICATION

I, Rochelle V. Grant, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Dated: August 12, 2020



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